whiskeys. The defendant pleaded a prior adjudication to the effect that the defendant had first appropriated the trade-mark "Old Crow" to designate its *blended* whiskey, although by *laches* it had lost its exclusive rights in this name as against the plaintiff. *Held,* that by virtue of prior appropriation of the trade-mark for blended whiskey the defendant was privileged to use it also for straight whiskey. *Rock Spring Distilling Co. v. Gaines & Co.* (1918, U. S.) 38 Sup. Ct. 327.

The gist of the wrong of unfair competition in trade-mark cases is the probability that the public may be led to mistake the defendant's goods for those of the plaintiff. *Amoskeag Mfg. Co. v. Garner* (1876, N. Y. Sup. Ct.) 54 How. Prac. 297. The test applied by the courts to determine such probability is free of fine distinctions; it is the care exercised by the average buyer of that particular class of goods. *Bass, Ratcliff & Gretton v. Feigenspan* (1899, C. C. D. N. J.) 96 Fed. 206. *Rushmore v. Badger Brass Mfg. Co.* (1912, C. C. A. 2d) 198 Fed. 379. It follows that the right to the exclusive use of a given trade-mark may be restricted to its use on a particular class of goods, and the use of the same mark by another permitted in connection with a different class. *Virginia Baking Co. v. Southern Biscuit Works* (1910) 111 Va. 227, 68 S. E. 261 (soda crackers and ginger snaps; the propriety of putting them in separate classes may, however, be doubted). But within its own class the trade-mark will be protected by injunction. As the court says, great confusion would arise in business from recognizing the same trade-mark as belonging to different persons for different kinds of the same article. Authorities in the lower courts accord: *American Tobacco Co. v. Polacsek* (1909, C. C. S. D. N. Y.) 170 Fed. 117 (smoking tobacco and cigarettes); *Collins Co. v. Oliver Ames Corp.* (1882, C. C. S. D. N. Y.) 18 Fed. 561; (axes, etc., and spades) *G. G. White Co. v. Miller* (1892, C. C. D. Mass.) 50 Fed. 277 (straight and blended whiskey); *Layton Pure Food Co. v. Church & Dwight Co.* (1910, C. C. A. 8th) 182 Fed. 35 (baking powder and baking soda). See also (1911) 30 L. R. A. (N. S.) 167. It is, however, possible as in the principal case that a prior appropriator may by *laches* lose his exclusive right against all competitors and as far as the other party to the suit is concerned, have merely a privilege or as the case calls it, a "defensive right" to use the mark. The cases on the main point of the instant case, though not numerous, are in agreement.

TRADING WITH THE ENEMY—CONTRACTS CONFERRING PECUNIARY ADVANTAGE ON CITIZEN.—In August, 1915, the defendants, D & Co., a French firm, sold to the plaintiff, Y, a subject of Bulgaria resident in Marseilles, a quantity of wheat to arrive. By the French law of September 27, 1914, the performance of any contract between a German or Austrian and a Frenchman, operating to the advantage of the German or Austrian, was declared null and void, which provision of law was extended to subjects of Bulgaria by decree of November 7, 1915. When the wheat arrived this decree was in force, on which ground the defendants refused to make delivery to the plaintiff. The plaintiff had in the meantime resold much of the wheat to French individuals at a loss. Examination of the terms of the contract and of the interests of the various parties under it showed that it operated to the decided advantage of Frenchmen and to the disadvantage of the plaintiff. *Held,* that the defendants should be ordered to make delivery to the plaintiff. *Yulzari v. Dreyfus,* Tribunal de Commerce of Marseilles, Nov. 16, 1915, reported in (1917) 44 CLUNET, 1015.

The case illustrates two striking differences between the French and the Anglo-American law. (1) The plaintiff, although resident in France, was regarded as an alien enemy, the test of nationality determining enemy character for trading purposes. The Anglo-American test of domicil would have relieved the plaintiff from this status. His permission to sue in France is attributable

to the special privilege in this respect extended to Bulgarians for political reasons. (2) Under the French law, not all contracts between alien enemies appear to be void and non-executable, but only such as are of pecuniary profit to the enemy. This requires the court to examine the benefits to be derived from the operation of such a contract. Although in this case the court found that the plaintiff would sustain a loss and Frenchmen derive a profit from the enforcement of this contract, it is not explained why the plaintiff sued at all. *Quaere,* whether the court would examine comparative advantages, and follow the test of preponderating advantage. Under Anglo-American law, the contract would be absolutely void, if made between alien enemies in the Anglo-American sense, regardless of the question of benefits. The consideration of "benefit to the subject" is applied in another connection, namely, in aid of the rule that alien enemies are not relieved from suit in the courts at the hands of subject plaintiffs. *Porter v. Freudenberg* (C. A.) [1915] 1 K. B. 857. *Cf.* also *Ertel Bieber & Co. v. Rio Tinto Co.* (H. of L.) [1918] A. C. 260.

TRUSTS—CONSTRUCTIVE TRUST—MURDER OF TENANT BY ENTIRETY BY CO-TENANT WITHOUT INTENTION TO PROFIT BY HIS CRIME.—A husband and wife held real estate as tenants by the entirety. The husband murdered his wife and then committed suicide. It was shown that he committed the crime without any intention of acquiring title as surviving tenant by the entirety. The executor and heirs of the wife filed a bill in equity to quiet their title against the administrator and heirs of the husband. *Held,* that the plaintiffs were entitled to the relief prayed for. *Van Alstyne v. Tuffy* (1918, N. Y. Trial T.) 9 Rochester-Syracuse Daily Record, 44.

When a prospective heir murders his ancestor, or when a devisee or legatee murders his testator, a problem arises upon which the courts have taken divergent views. By legislation the murderer may, as part of the penalty for his crime, be deprived of the privilege of inheritance. *Estate of Donnelly* (1899) 125 Cal. 417, 58 Pac. 61. In the absence of legislation three views are possible. (1) The murderer may be given title on the ground that the courts are powerless to read into the statute of descent or into the will an exception excluding him. Although the result shocks one's sense of justice, this view is supported by the weight of authority. *Wall v. Pfanschmidt* (1914) 265 Ill. 180, 106 N. E. 785. (2) The opposite view, sustained by a few courts, excludes the murderer from taking title, on the ground that the statute of descent or the will must be read in the light of public policy, which forbids a person to profit by his own crime. *Perry v. Strawbridge* (1908) 209 Mo. 621, 108 S. W. 641. (3) The third view, based on principles of constructive trusts, prevails in New York and a few other jurisdictions. Legal title is recognized as passing to the murderer, but on equitable principles a trust is raised in favor of the heirs of the person murdered. *Ellerson v. Westcott* (1896) 148 N. Y. 149, 42 N. E. 540, explaining *Riggs v. Palmer* (1889) 115 N. Y. 506, 22 N. E. 188; *Cleaver v. Mutual Reserve, etc., Assn.* (C. A.) [1892] 1 Q. B. 147. This view, it is submitted, accomplishes justice without judicial legislation and in accordance with recognized principles. It also enables a *bona fide* purchaser from the murderer to be protected in his title. The principal case is a logical extension of the New York rule. It is worthy of note in that it applies the constructive trust principle to the innocent heirs of the wrongdoer, and this regardless of the motives of the murderer in committing the crime. On the latter point *cf. Hall v. Knight* (C. A.) [1914] P. 1 (a recent English case excluding from succession under a will a devisee convicted of manslaughter in killing the testator). Only one other case dealing with estates by entireties in this connection seems to have been decided. *Beddingfield v. Estill* (1907) 118 Tenn. 39, 100 S. W. 108. There an opposite result was reached on the ground that in an estate by the entirety the surviving